

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BRITE SMART CORP.

Plaintiff,

v.

GOOGLE INC.

Defendant.

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Civ. Action No. 2:14-cv-760

JURY DEMANDED

**PLAINTIFF’S OPPOSED MOTION FOR LEAVE
TO FILE AMENDED COMPLAINT**

Pursuant to Federal Rule of Civil Procedure 15(a), Plaintiff Brite Smart Corp. (“Brite Smart” or “Plaintiff”), by and through its attorneys of record, hereby moves the Court for leave to file its First Amended Complaint for Patent Infringement.

I. INTRODUCTION

Brite Smart seeks to amend its original Complaint (Dkt. 1) against Defendant Google Inc. (“Google” or “Defendant”) for the following reasons: (1) to add a newly-issued patent, United States Patent No. 8,874,486 (“the ‘486 patent”) entitled “Method And System To Detect Invalid And Fraudulent Impressions And Clicks In Web-Based Advertisement Systems”, which issued on October 28, 2014, to the Complaint; (2) based on information and belief Defendant has continued to infringe the original patents-in-suit despite awareness of Brite Smart’s patents (at least since the date that Google was served with Brite Smart’s original Complaint), Brite Smart’s allegations of infringement, and in reckless disregard of Brite Smart’s patent rights; (3) to correct a typographical error referencing the incorrect patent number in paragraph 14 of Plaintiff’s original Complaint;

and (4) to attach copies of the original patents-in-suit that reflect recently-issued certificates of correction for the originally-asserted patents. Defendants oppose the motion.

II. ARGUMENT

Plaintiff seeks leave of the Court to amend its complaint pursuant to Fed. R. Civ. P. 15(a)(2), whereby a court “should freely give leave when justice so requires.” Reasons for denying leave include undue delay in filing the motion, bad faith or dilatory motive, repeated failure to cure deficiencies, undue prejudice to the opposing party and futility of amendment. None of these reasons for denying leave are present here. Brite Smart filed its original complaint on July 10, 2014. The Court’s scheduling conference is set for November 3, 2014. The ‘486 patent issued on October 28, 2014. Thus, Brite Smart did not unduly delay in seeking leave to amend the Complaint. Further, the ‘486 patent is a continuation patent in the same family and shares the same specification as three of the four current patents-in-suit. In addition, Brite Smart’s proposed amendment is made in good faith, is not futile, and will not cause unfair prejudice to Defendant. For all these reasons, as well as the pleadings, records and files herein which this Court may properly take judicial notice, and upon such other and further evidence and argument as the Court may receive prior to its decision, Brite Smart respectfully moves the Court for an order granting Brite Smart leave to file the proposed First Amended Complaint.

III. CONCLUSION

For the foregoing reasons, Brite Smart respectfully requests that the Court grant Brite Smart leave to file its First Amended Complaint.

DATED: October 28, 2014

Respectfully submitted,

/s/ Robert Katz

Stafford Davis

State Bar No. 24054605

Email: sdavis@stafforddavisfirm.com

THE STAFFORD DAVIS FIRM, PC

305 South Broadway

Suite 406

Tyler, TX 75702

Phone: (903) 593-7000

Fax: (903) 703-7369

Robert D. Katz

Lead Attorney

State Bar No. 24057936

Email: rkatz@katzlawpllc.com

KATZ PLLC

6060 N. Central Expressway, Suite 560

Dallas, TX 75206

Phone: (214) 865-8000

ATTORNEYS FOR PLAINTIFF

BRITE SMART CORP.

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that counsel for Defendant has complied with the meet and confer requirement in Local Rule CV-7(h). This motion is opposed. The personal conference required by Local Rule CV-7(h) was conducted on October 23, 2014 through October 27, 2014 between Robert Katz, counsel for Plaintiff Brite Smart Corp. and Amr Aly, counsel for Defendant Google Inc. Mr. Aly confirmed that Defendant is opposed to the relief sought in this motion.

/s/ Robert Katz

Robert Katz

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on date indicated above.

/s/ Robert Katz
Robert Katz